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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/169109

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 2, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 28, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's FS due to his failure to meet Able-Bodied Adult without Dependents (ABAWD) work requirements.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], IM Spec.-Advanced  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is an unemployed resident of Milwaukee County.
2. The petitioner has been receiving FS as a household of one person since at least December 2014. At the petitioner's periodic case review in May 2015, the Department determined that he was an ABAWD and would have to participate in the work program. On May 13, 2015, the Department

mailed a notice, *FoodShare Employment and Training Program Referral*, to the petitioner at his correct mailing address. This notice advised him that he had been referred to the mandatory work program, FSET, unless he was exempt or working at least 80 hours monthly. A person seeking an exemption was directed to fill out the attached *Proof of Work Requirement Exemption* form. Further, the notice declared that without participation, the petitioner would receive FS for only three months out of a 36-month period.

3. The local agency left a voicemail message for the petitioner, and mailed him an *FSET Initial Appointment Scheduled* letter, advising him to appear for his first FSET appointment on May 21, 2015, at 9:00 a.m. The letter was sent to [REDACTED], which is the mailing address that the petitioner gave to the agency at his May 2015 case review. The letter was not returned by the Postal Service as undeliverable. He did not appear.
4. The local agency mailed the petitioner another *FSET Initial Appointment Scheduled* letter on May 26, 2015, advising of an appointment on June 2, 2015 at 9:00 a.m. The letter was sent to [REDACTED]. The petitioner did not appear for the June 2 appointment.
5. *FSET Initial Appointment Scheduled* letters were mailed to the petitioner on June 9, June 16, August 3, and August 10, 2015 establishing FSET initial appointments on June 11, June 22, August 6 and August 13, 2015, respectively. All were mailed to [REDACTED]. The petitioner did not appear for any of the appointments. *See*, Exhibit 14.
6. On August 19, 2015, the Department mailed a notice to the petitioner advising that his FS would be discontinued effective September 1, 2015. The basis for discontinuance was (1) failure to participate in FSET, and (2) expiration of the three-month benefit grace period (June/July/August 2015).
7. The petitioner has not participated in the FSET work program.
8. The petitioner did not have good cause for his failure to appear for an initial appointment.
9. The petitioner broke his lower leg and underwent surgery for the same in 2014. He did not supply verification of his medical problems to the agency until this hearing (October 2015). At hearing, he supplied a letter from a medical provider which declared:

[REDACTED] is unable to attend his work program due to pain issues. He had an [unintelligible] in February 2014. He became a patient at (APM) Advanced Pain Management in July 2014. Since then, we have been helping with finding treatment options, but his pain impairs his ability. He is unable to walk more than one block and cannot stand for 20 minutes at a time. It is difficult for him to do certain activities. Please contact our office if any questions or concerns arise.

The letter was dated September 2, 2015.

### **DISCUSSION**

Effective April 1, 2015, Wisconsin imposed an ABAWD work program requirement statewide. Under ABAWD rules, non-exempt, able-bodied, childless adults must meet ABAWD work requirements in order to continue receiving FS benefits. An ABAWD is a person who is (1) 18 – 49 years old, (2) able to work, (3) not residing in a household with a minor child, and (4) not pregnant. *See*, *FoodShare Wisconsin Handbook (FSH)*, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

The petitioner is an unemployed ABAWD person. An ABAWD may be exempt from work requirements under these limited circumstances:

**EXEMPT ABAWD:** A FS member is determined an exempt ABAWD if he or she is an ABAWD who meets at least one of the following criteria, as determined by the IM agency:

- Determined unfit for employment, which includes someone who is:
  - - Receiving temporary or permanent disability benefits from the government or a private source;
    - Mentally or physically unable to work, as determined by the IM agency;
    - Verified as unable to work by a statement from a health care professional or a social worker.
- Receiving Unemployment Compensation (UC) or has applied for UC and is complying with UC work requirements;
- Regularly participating in an alcohol or other drug abuse (AODA) treatment or rehabilitation program;
- A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1);
- A high school student 18 years of age or older, attending high school at least half-time;
- Primary caregiver of a dependent child under age 6 or an incapacitated person;
- Receiving transitional FS benefits; or
- Meeting the ABAWD work requirement outside of FSET through work and/or other allowable work program participation.

Exempt ABAWDs are not subject to TLBs [time-limited benefits of 3 months] during months in which they have a verified exemption. Correct determination of ABAWD exemptions impacts whether or not members are subject to time-limited FS benefits (TLBs). ABAWDs may cycle on and off FS benefits and may gain or lose exemptions for a variety of reasons.

*FSH*, § 3.17.1.5. *See also*, 7 C.F.R. § 273.7(b)(1).

The petitioner *now* asserts that he should have been exempt due to his physical limitations. His exemption verification was provided after the case closure and the expiration of his three months of time-limited benefits; verification is not retroactively considered in that situation. *FSH*, 3.17.1.14. He may file his exemption verification with a new FS application in the future, if he so desires.

Given that the petitioner was not exempt from June through August, we now turn to his failure to appear for enrollment appointments. The requirement that he enroll in a work program such as FSET, is permissible under federal FS rules. 7 C.F.R. § 273.7(a)(1)(ii). The failure to meet work or work program requirements results in ineligibility after three months of such failure. 7 C.F.R. §§ 273.7(f)(1) and 273.24(b).

The petitioner did not establish that he had “good cause” for missing any of his FSET enrollment appointments. *FSET Handbook (FSET)*, <http://www.emhandbooks.wisconsin.gov/fset/fset.htm>, at §6.6. *See also*, 7 C.F.R. § 273.24(b)(2). He claimed not to have received any of the six enrollment appointment letters mailed to his post office box, but that claim was not credible.

### **CONCLUSIONS OF LAW**

1. The petitioner, an unemployed ABAWD, failed to timely enroll or otherwise participate in the FSET program for at least three months.
2. The Department correctly discontinued the petitioner’s FS effective September 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of December, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 9, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability